



HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, Colorado 80527-2400

PATENT APPLICATION

ATTORNEY DOCKET NO. 10017267-1

IN THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Noel K. Hancock et al.

Confirmation No.: 6285

Application No.: 09/973,430

Examiner: Sterrett, Jonathan G.

Filing Date: October 9, 2001

Group Art Unit: 3623

Title: BENCHMARKING SUPPLIER PRODUCTS

Mail Stop Appeal Brief-Patents  
Commissioner For Patents  
PO Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on Aug. 30, 2006.

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) \$500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐ (a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

☐ 1st Month  
\$120

☐ 2nd Month  
\$450

☐ 3rd Month  
\$1020

☐ 4th Month  
\$1590

☐ The extension fee has already been filed in this application.

☒ (b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of \$ 500. At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees.

☒ A duplicate copy of this transmittal letter is enclosed.

☒ I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to:  
Commissioner for Patents, Alexandria, VA 22313-1450  
Date of Deposit: Oct. 30, 2006

OR

☐ I hereby certify that this paper is being transmitted to the Patent and Trademark Office facsimile number (571)273-8300.

Date of facsimile:

Typed Name: Edouard Garcia

Signature: \_\_\_\_\_

Respectfully submitted,

Noel K. Hancock et al.

By \_\_\_\_\_

Edouard Garcia

Attorney/Agent for Applicant(s)

Reg No. : 38,461

Date : Oct. 30, 2006

Telephone : (650) 289-0904



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Noel K. Hancock et al.                      Art Unit : 3623  
Serial No. : 09/973,430                                      Examiner : Sterrett, Jonathan G.  
Filed : October 9, 2001  
Title : BENCHMARKING SUPPLIER PRODUCTS

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

APPEAL BRIEF

I. Real Party in Interest

The real party in interest is Hewlett-Packard Development Company, L.P., a Texas Limited Partnership having its principal place of business in Houston, Texas.

II. Related Appeals and Interferences

Appellant is not aware of any related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. Status of Claims

Claims 1-20 are pending.

Appellant appeals all rejections of the claims 1-20.

11/06/2006 CNEGA1 00000027 002025 09973430  
01 FC:1402 500.00 DA

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commission for Patents, PO Box 1450, Alexandria, VA 22313-1450 on:

October 30, 2006

Date

(Signature of person mailing papers)

Edouard Garcia

(Typed or printed name of person mailing papers)

#### IV. Status of Amendments

The Amendment that was filed on March 4, 2006, has been entered and acted upon by the Examiner.

No amendments were filed after the final Office action dated May 30, 2006.

#### V. Summary of Claimed Subject Matter

Independent claims 1 and 17 respectively define a method and a computer program for benchmarking product samples provided to a purchasing entity by multiple independent suppliers. In accordance with these claims, multiple sets of performance parameter values corresponding to results of testing each of the product samples are collected at test facilities of each of the suppliers, and an evaluation report is generated based upon the multiple sets of performance parameter values.

The inventive subject matter defined in claims 1 and 17 enables the benchmarking of product samples that are provided to a purchasing entity by multiple independent suppliers in a way that avoids the need for the purchasing entity to use its own testing equipment to perform evaluation testing of the product samples and avoids the delay and expense that often is associated with third-party testing entities (see page 2, lines 24-29, of the specification). At the same time, this inventive subject matter enables suppliers to obtain information regarding the performance of their products relative to the performance of products from competing suppliers, oftentimes well in advance of the time at which the products are released (see page 2, line 29 - page 3, line 2, of the specification). Suppliers may use this information to improve the design and other features of their products and thereby increase the demand for their products, while still getting the products to market within narrow time-to-market windows and meeting product price/performance specifications (see page 3, lines 2-5, of the specification). In addition, the invention provides suppliers with some information about how their testing facilities compare with the facilities of competing suppliers (see page 3, lines 5-7, of the specification). Suppliers may use this information to improve aspects of their testing and manufacturing facilities to further increase the demand for their product (see page 3, lines 7-9, of the specification).

FIG. 2 shows an embodiment of a method that includes steps in accordance with claim 1 and may be implemented by a computer program in accordance with claim 17. In the method of FIG. 2, product samples 10, 12, 14 are provided to a purchasing entity 16 by one or more suppliers 18, 20, 22 (Supplier 1, Supplier 2, ... , Supplier N) (FIG. 2, step 24; see FIG. 1 and page 5, line 20 - page 6, line 2, of the specification). After receiving the product samples 10-14 from the suppliers 18-22, the purchasing entity 16 tests each product sample at test facilities of each supplier 18-22 to obtain multiple sets of performance parameter values (FIG. 2, step 26; see FIG. 1 and page 6, lines 3-13, of the specification). After the product samples 10-14 have been tested at the test facilities of each of the suppliers, an evaluation report is generated based upon the multiple sets of performance parameter values that are obtained for each product sample (FIG. 2, step 28; see FIG. 1 and page 8, lines 1-4, of the specification).

As explained on page 6, lines 5-8, in one embodiment, a representative of the purchasing entity 16 takes the set of product samples 10-14 from one supplier 18-22 to another and tests each product sample using the test facilities of supplier 18-22 in accordance with the aspect of the invention defined in claim 2.

The purchasing entity representative controls the testing of the product samples and prevents unauthorized access to the product samples during the testing process in accordance with the aspect of the invention defined in claims 3 and 4 (see page 6, lines 8-10, of the specification). In one example, the purchasing entity representative maintains custody of the product samples 10-14 during testing in accordance with the aspect of the invention defined in claim 5 (see page 6, lines 10-11, of the specification). In some embodiments, prior to testing the product samples 10-14, the purchasing entity representative, or the suppliers themselves, may remove all identification information from the product samples in accordance with the aspect of the invention defined in claims 6 and 7 (see page 6, lines 14-16, of the specification). As explained on page 7, lines 5-7, of the specification, the actual tests that are performed at the test facilities of suppliers 18-22 preferably are performed on the product samples under conditions that are substantially the same from one test facility to another in accordance with the aspect of the invention defined in claim 8.

After an evaluation report has been generated based upon the performance parameter values collected from each test facility (FIG. 2, step 28), one or more evaluation reports 34 may be distributed to one or more of suppliers 18-22 in accordance with the aspect of the

invention defined in claim 11 (FIG. 2, step 36; see page 8, lines 22-25, of the specification).

In some embodiments, a fee is collected from a given one of the suppliers before transmitting the evaluation report to the given supplier in accordance with the aspect of the invention defined in claim 12 (see page 9, lines 10-13, of the specification). In some embodiments, the purchasing entity 16 customizes the evaluation report for a given supplier in accordance with the invention defined by claim 13 (see page 9, lines 4-9, of the specification). In this process the purchasing entity 16 encodes any supplier identification information contained in the report, except information relating to the given supplier in accordance with the aspect of the invention defined in claim 14 (FIG. 4, step 48; see page 9, lines 4-6, of the specification).

In these ways, the inventive subject matter defined in claims 11-14 provide a self-checking industry-wide benchmarking resource that compiles and disseminates performance information that may be used to improve the quality of the component products, while maintaining the confidentiality and security of the suppliers' proprietary information. At the same time, the invention provides incentives for suppliers to participate in the benchmarking process (see page 3, lines 10-15, of the specification).

## VI. Grounds of Rejection to be Reviewed on Appeal

A. Claims 1-4, 8-10, and 17-19 stand rejected under 35 U.S.C. § 103(a) over Kinra (U.S. 5,731,991) in view of various unsubstantiated assertions regarding "well-known" prior art.

B. Claim 5 stands rejected under 35 U.S.C. § 103(a) over Kinra in view of Schoneker (Schoneker, David R; "Changing the supply-chain controls for excipients—Part 1: The IPEC-Americas 'Certificate of Analysis guide for bulk pharmaceutical excipients1", June 2000, Pharmaceutical Technology, Vol. 24, Iss. 6, p.42, ProQuest ID 55656380).

C. Claims 6 and 7 stand rejected under 35 U.S.C. § 103(a) over Kinra in view of Stewart (Stewart, Doug; "Suspicious for a living / behind the scenes with bumper bashers, dishwasher debunkers, chocolate chip chompers and condom demolition experts – the folks who test products for Consumer Reports", Oct 1993, San Francisco Chronicle, Calif; p.7.Z.1, ProQuest ID 67113483).

D. Claims 11-14 and 20 stand rejected under 35 U.S.C. § 103(a) over Kinra in view of Performance Measurement Group (PMG) ("Welcome to the Performance

Measurement Group, LLC", [www.pmgbenchmarking.com](http://www.pmgbenchmarking.com), [web.archive.org](http://web.archive.org/web/20001006043000/www.pmgbenchmarking.com/ps_pdbf_faq.html) webpage of October 6, 2000, pp.1-4, [web.archive.org/web/20001006043000/www.pmgbenchmarking.com/ps\\_pdbf\\_faq.html](http://web.archive.org/web/20001006043000/www.pmgbenchmarking.com/ps_pdbf_faq.html)).

E. Claims 15 and 16 stand rejected under 35 U.S.C. § 103(a) over Kinra in view of General Motors Supplier Development General Procedure (GP10) ("General Motors Supplier Development – General Procedure: Evaluation and Accreditation of Supplier Test Facilities GP10", Published by GM's Supplier Development Administration, GM1796, February 1990, pp.1-19).

## VII. Argument

### **A. Rejection of claims 1-4, 8-10, and 17-19 under 35 U.S.C. § 103(a) over Kinra (U.S. 5,731,991) in view of various unsubstantiated assertions regarding “well-known” prior art**

The Examiner has rejected claims 1-4, 8-10, and 17-19 under 35 U.S.C. § 103(a) over Kinra in view of various unsubstantiated assertions regarding “well-known” prior art.

#### 1. Overview of Kinra's disclosure

Kinra describes an automated software product evaluation scheme that allows purchasers to evaluate and compare various software product alternatives that may be used in developing a computing system (see col. 1, lines 10-26 and lines 33-34). To this end, Kinra's scheme “includes a software product evaluation technique which allows a user to emphasize which criteria in various alternate software products are most important to the user” (col. 1, lines 63-65).

In accordance with Kinra's teachings, a software product evaluation system 10 receives product data from a user (see col. 2, lines 57-58, and col. 9, lines 38-47). The product data that is input by the user is in the form of numerical values that are responsive to a number of evaluation statements that are generated by the system (see col. 2, line 66, through col. 3, line 1). “The numerical values received in response to an evaluation statement may represent the capacity of a particular software product to perform functions specified by the statement” (col. 3, lines 9-11). The product data that is input by the user for a given

software product is stored in a separate product data file 16 (see col. 3, lines 26-28). An environment creator 18 combines product data for two or more product data files 16 that form a software environment (see col. 3, lines 34-37). The system 10 uses weighting values, which correspond to specific criteria for evaluation, to generate criterion scores for each software product and software environment (see col. 4, lines 28-29).

2. Independent claim 1

Claim 1 recites:

1. A method of benchmarking product samples provided to a purchasing entity by multiple independent suppliers, comprising:

collecting multiple sets of performance parameter values corresponding to results of testing each of the product samples at test facilities of each of the suppliers; and

generating an evaluation report based upon the multiple sets of performance parameter values.

Thus, claim 1 requires collecting multiple sets of performance parameter values corresponding to results of testing each of the produce samples provided to a purchasing entity by multiple independent suppliers at test facilities of each of the suppliers, and generating an evaluation report based upon the multiple sets of performance parameter values.

3. The Examiner's position and Applicant's rebuttal

a. The proper construction of claim 1

In the rejection of claim 1, the Examiner has not accorded any patentable weight to the claim language "provided to a purchasing entity by multiple independent suppliers" (see page 3, first paragraph, of the final Office action; emphasis added):

In further response to applicant's arguments, the recitation "provided to a purchasing entity by multiple independent suppliers" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not

accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

As explained in this statement, the Examiner has based his refusal to accord any patentable weight to the claim language “provided to a purchasing entity by multiple independent suppliers” merely “because the recitation occurs in the preamble.” The mere fact that claim language is recited in the preamble, however, is not a sufficient basis to deny that language any patentable weight. Indeed, the Examiner’s own statement of the guidelines for determining whether or not to accord patentable weight to the preamble does not support the Examiner’s refusal to accord patentable weight to the claim language “provided to a purchasing entity by multiple independent suppliers.” In particular, in accordance with these guidelines, the Examiner must show that the preamble “merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone” before refusing to give the preamble any patentable weight. The Examiner, however, has not made such a showing.

In general, “If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if in the balance of the claim” (MPEP § 2111.02, quoting *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182, F.3d 1298, 1305). The preamble of claim 1 should be construed as if it were in the balance of the claim for the following reasons.

The preamble of claim 1 recites limitations of the claim. In particular, the first clause of the body of claim 1 recites “collecting multiple sets of performance parameter values corresponding to results of testing each of the product samples at test facilities of each of the suppliers” (emphasis added). The only antecedent basis for “the product samples” is provided by the preamble, which recites “A method of benchmarking product samples provided to a purchasing entity by multiple independent suppliers.” Thus, the preamble recites a limitation of the claim (namely, “product samples”) and therefore the claim



preamble should be construed as if in the balance of the claim in accordance with MPEP § 2111.02.

In addition, the recitation of “provided to a purchasing entity by multiple independent suppliers” in the preamble is necessary to give life, meaning, and vitality to claim 1 for the following reasons. First, the preamble statement that the product samples are “provided to a purchasing entity by multiple independent suppliers” is not merely a statement describing the purpose of the method defined by claim 1. Instead, it distinctly defines the nature of the “product samples” which are the subject of claim 1. Second, the language “provided to a purchasing entity by multiple independent suppliers” is intimately meshed with the language in the body of the claim. That the claim element “product samples” in the body of the claim refers to “product samples provided to a purchasing entity by multiple independent suppliers” is discernible only from the claim preamble. For these reasons, the preamble and the remainder of independent claim 1 must be construed as one unified and internally consistent recitation of the claimed invention in accordance with MPEP § 2111.02.

Thus, properly construed, claim 1 requires collecting multiple sets of performance parameter values corresponding to results of testing each of the produce samples provided to a purchasing entity by multiple independent suppliers at test facilities of each of the suppliers, and generating an evaluation report based upon the multiple sets of performance parameter values.

b. The rejection claim 1 under 35 U.S.C. § 103(a)

The rejection of claim 1 under 35 U.S.C. § 103(a) is premised on the following argument:

1. “Kinra teaches: collecting multiple sets of performance parameter values corresponding to results of testing each of the product samples” (see page 14, § 14, lines 3-5, of the final Office action);
2. “Kinra does not teach: at test facilities of each of the suppliers” (see page 15, lines 9-10, of the final Office action); and
3. To make-up for this failure of Kinra’s disclosure (see the last two paragraphs on page 15 of the final Office action; emphasis added):

... Official Notice is taken that having test facilities at suppliers is old and well known in the art of supply chain management. Testing and evaluation of products at supplier facilities provides for the necessary quality control and verification so that quality is ensured prior to being shipped from the supplier.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing evaluation of product samples to include the step of providing evaluations of product samples at test facilities of each of the suppliers, because it would ensure products meet quality standards prior to being shipped from the supplier.

This reasoning, however, does not establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a). In particular, claim 1 does not recite “providing evaluations of product samples at test facilities of each of the suppliers,” as assumed by the Examiner in support his rejection (see underlined portion of the Examiner’s statement quoted above). Instead, claim 1 recites “collecting multiple sets of performance parameter values corresponding to results of testing each of the product samples at test facilities of each of the suppliers” (emphasis added). Therefore, on its face, the Examiner’s rejection of claim 1 does not establish a proper *prima facie* case of obviousness under 35 U.S.C. § 103(a) because it does not include a showing that all the claim limitations are taught or suggested by Kinra or the knowledge generally available to one of ordinary skill in the art (see MPEP § 706.02(j)).

Moreover, the Examiner’s argument is premised on the unsubstantiated assertion that at the time the invention was made it was generally known that “Testing and evaluation of products at supplier facilities provides for the necessary quality control and verification so that quality is ensured prior to being shipped from the supplier.” Putting to one side the issue of whether the subject of the Examiner’s Official Notice accurately reflects what was generally known at the time the invention was made, the mere knowledge that a product supplier typically tests its own products at its own facilities before shipping them does not lead to the conclusion that it would have been obvious to collect multiple sets of performance parameter values corresponding to results of testing each of the product samples provided to a purchasing entity by multiple independent suppliers at the test facilities of each of the independent suppliers. Indeed, the Examiner has not provided any basis for believing that a supplier would have any incentive whatsoever to test and evaluate the products of other suppliers to provide “for the necessary quality control and verification so that quality is ensured prior to being shipped from the supplier.” The fact is that neither Kinra nor the

subject of the Examiner's Office Notice provides any teaching or suggestion that would have led one skilled in the art at the time the invention was made to use Kinra's software product evaluation system to collect multiple sets of performance parameter values corresponding to results of testing each of the product samples provided to a purchasing entity by multiple independent suppliers at the test facilities of each of the independent suppliers.

In response to the points presented in the preceding paragraph, the Examiner has stated that:

The Official Notice is that it is old and well known in the art of supply chain management to have test facilities at each suppliers so that qualification of components (i.e. so that the components are determined to be of a certain predetermined standard) occurs prior to shipment (i.e. products that are bad or are of insufficient standards are not shipped from a supplier to the customer). Since Kinra acknowledges that suppliers provide product that needs to have a standard test applied for evaluation and scoring of performance parameters, one of ordinary skill in the art of supply chain management at the time of the invention would find it obvious to modify Kinra's teaching to include performing his testing, evaluating and scoring of product performance parameters at the suppliers because it would prevent defective product from being shipped to a customer.

This restatement of the Examiner's argument, however, does not establish that it would have been obvious to use Kinra's software product evaluation system to collect multiple sets of performance parameter values corresponding to results of testing each of the product samples provided to a purchasing entity by multiple independent suppliers at the test facilities of each of the independent suppliers.

Furthermore, contrary to the Examiner's assertion, one skilled in the art at the time the invention was made would not have been motivated to use Kinra's software product in the manner proposed by the Examiner. Kinra's software product evaluation system is designed to generate at least one criterion score for each software product, where the criterion scores allow software product purchasers to evaluate and compare various software product alternatives that may be used in developing a computing system (see, e.g., the Abstract, col. 1, lines 10-26, and col. 1, line 29 - col. 2, line 27). Generating criterion scores of the type described in Kinra and evaluating these criterion scores in accordance with Kinra's teachings would not enable a supplier to qualify components "so that the components are determined to be of a certain predetermined standard" prior to shipment, nor would they allow a supplier to

ensure that “products that are bad or are of insufficient standards are not shipped from a supplier to the customer.” For at least these reasons, one skilled in the art at the time of the invention would not have been motivated to combine Kinra’s teachings and the subject of the Examiner’s Office Notice in the manner proposed by the Examiner.

For at least the reasons explained above, the Examiner’s rejection of independent claim 1 under 35 U.S.C. § 103(a) over Kinra in view of the unsubstantiated knowledge that is the subject of the Examiner’s Official Notice should be withdrawn

2. Claims 2-4 and 8-10

Each of claims 2-4 and 8-10 incorporates the features of independent claim 1 and therefore is patentable over Kinra in view of the unsubstantiated knowledge that is the subject of the Examiner’s Official Notice for at least the same reasons explained above.

Claims 2-4 and 8 also are patentable over Kinra in view of the unsubstantiated knowledge that is the subject of the Examiner’s Official Notice for the following additional reasons.

a. Claim 2

Claim 2 recites that “the collecting comprises testing each of the product samples at the test facilities of each of the suppliers.”

In his rejection of claim 2, the Examiner has acknowledged that Kinra does not teach or suggest testing each of the product samples at each of the suppliers. In an effort to make-up for this failure of Kinra’s disclosure the Examiner has stated that (page 16, lines 7-15, of the final Office action; emphasis added):

However, Official Notice is taken that having test facilities at suppliers is old and well known in the art of supply chain management. Prequalification of products at supplier facilities provides for the necessary quality control and verification so that quality is ensured prior to being shipped from the supplier.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing evaluation of product samples to include the step of providing evaluations of product samples at test facilities of each of the suppliers, because it would ensure

products meet quality standards prior to being shipped from the supplier.

As explained above in connection with claim 1, claim 1 does not recite "providing evaluations of product samples at test facilities of each of the suppliers," as assumed by the Examiner in support his rejection (see underlined portion of the Examiner's statement quoted above). Instead, claim 1 recites "collecting multiple sets of performance parameter values corresponding to results of testing each of the product samples at test facilities of each of the suppliers" (emphasis added). Therefore, on its face, the Examiner's rejection of claim 1 does not establish a proper prima facie case of obviousness under 35 U.S.C. § 103(a) because it does not include a showing that all the claim limitations are taught or suggested by Kinra or the knowledge generally available to one of ordinary skill in the art (see MPEP § 706.02(j))

In addition, the Examiner's assumption that a product supplier typically tests its product at its own facilities does not lead to the conclusion that it would have been obvious to collect multiple sets of performance parameter values corresponding to results of testing each of the product samples provided to a purchasing entity by multiple independent suppliers at the test facilities of each of the independent suppliers. In order to establish a proper rejection under 35 U.S.C. § 103(a), the Examiner is obligated to explain why one skilled in the art at the time the invention was made would have been motivated to modify Kinra's software product evaluation system to collect multiple sets of performance parameter values corresponding to results of testing each of the product samples provided to a purchasing entity by multiple independent suppliers at the test facilities of each of the independent suppliers.

In response to the points presented in the preceding paragraph, the Examiner has stated that (see page 6, line 15 - page 7, line 2, of the final Office action; emphasis added):

The Official Notice in Claim 2 notes that in supply chain management (i.e. the practice of supply chain management includes the purchasing of a product to be used by the purchaser as an element in the purchaser's own product), it is old and well known to test materials at suppliers, i.e. to prequalify the material prior to it being shipped. This is done so that raw material from suppliers is known to be of acceptable quality, once it is received on site. Otherwise it would have to be shipped back to the supplier for correction, a waste of time and money. A practitioner of ordinary skill in the art of supply chain management would be motivated to modify Kinra to include testing and evaluating product at the suppliers, because

it would ensure the product was of adequate quality before it was shipped to the customer.

This restatement of the Examiner's argument, however, does not establish that it would have been obvious to use Kinra's software product evaluation system to collect multiple sets of performance parameter values corresponding to results of testing each of the product samples provided to a purchasing entity by multiple independent suppliers at the test facilities of each of the independent suppliers. Furthermore, contrary to the Examiner's assertion, one skilled in the art at the time the invention was made would not have been motivated to use Kinra's software product in the manner proposed by the Examiner. For the same reasons explained above in connection with claim 1, Kinra's system would not enable a supplier to "prequalify the material prior to it being shipped," nor would it allow a supplier to "ensure the product was of adequate quality before it was shipped to the customer." Kinra's software product evaluation system 10 only generates criterion scores for each software product and software environment based on product data that is input by the user in the form of numerical values that are responsive to a number of evaluation statements generated by the system.

For these additional reasons, the Examiner's rejection of claim 2 under 35 U.S.C. § 103(a) over Kinra in view of the unsubstantiated knowledge that is the subject of the Examiner's Official Notice should be withdrawn.

b. Claim 3

Claim 3 recites that "the testing comprises the purchasing entity controlling the product samples during the testing at the test facilities of each of the suppliers."

Claim 3 incorporates the features of claim 2 and therefore is patentable over Kinra for at least the additional reason explained above in connection with claim 2. Claim 3 also is patentable over Kinra for the following additional reasons.

In support of his rejection of claim 3, the Examiner has stated that col. 6, lines 62-63 of Kinra discloses that "access to testing can be designated (i.e., controlling access to testing of samples – see also column 6, line 59-61). In col. 6, lines 59-63, however, Kinra merely discloses that the access of various users to the product data and weighting values "can be a design choice for system 10." "The product data includes information that can be used to

evaluate a software product” (col. 2, lines 58-60). “Each criterion weighting value 24 reflects the relative importance to the criterion of the functional capacity or feature specified in an evaluation statement” (col. 4, lines 36-39). This disclosure would not have led one skilled in the art at the time the invention was made to believe that access to the software products being evaluated are being controlled.

Moreover, the Examiner has acknowledged that “Kinra does not teach where the controlling is provided by the purchasing entity.” In an effort to make-up for this failure of Kinra’s disclosure, the Examiner once again has relied on an unsubstantiated assertion regarding what was known at the time of the invention. In particular, the Examiner has stated that (page 17, lines 6-16, of the final Office action):

... official notice is taken that it is old and well known in the art of supply chain management for a purchasing entity of products to control the testing of said products. The direction and control of testing products by the purchasing entity ensures that standards and criteria of the purchasing entity are being measured against during the test to ensure an appropriate buying decision.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing access control of product samples to include the step of where the testing is controlled by the purchasing entity, because it would ensure products are properly qualified/disqualified according the purchasing entity's standards prior to the buying decision.

It may be “old and well known in the art” for a purchasing entity to control the testing of products at its own testing facilities. Indeed, the Background section of the present application describes the standard practice in which a manufacturer performs benchmarking tests on component parts at its own facilities. This practice, however, does not involve the purchasing entity controlling the product samples during the testing of each of the product samples at the test facilities of each of the suppliers of the product samples. Moreover, this practice certainly does not involve the purchasing entity controlling the product samples during the testing at the test facilities of each of the suppliers, where the product samples were provided to the purchasing entity by multiple independent suppliers.

Therefore, on its face, the Examiner’s rejection of claim 3 does not establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a) because it does not include a showing that all the claim limitations are taught or suggested by Kinra or in the knowledge generally

available to one of ordinary skill in the art (see MPEP § 706.02(j)). It is noted that the Examiner's restatement of his position on page 8, lines 1-11, of the final Office action does not make-up for the failure of establish a *prima face* case of obviousness under 35 U.S.C. § 103(a) for the same reasons explained above.

For these additional reasons, the Examiner's rejection of claim 3 under 35 U.S.C. § 103(a) over Kinra in view of the unsubstantiated knowledge that is the subject of the Examiner's Official Notice should be withdrawn.

c. Claim 4

Claim 4 recites that "the testing comprises the purchasing entity preventing unauthorized access to the product samples during the testing at the test facilities of each of the suppliers."

Claim 4 incorporates the features of claim 3 and therefore is patentable over Kinra in view of the unsubstantiated knowledge that is the subject of the Examiner's Official Notice for at least the additional reason explained above in connection with claim 3.

d. Claim 8

Claim 8 recites "the testing comprises testing each of the product samples at the test facilities of each of the suppliers under substantially similar test conditions."

Claim 8 incorporates the features of claim 2 and therefore is patentable over Kinra in view of the unsubstantiated knowledge that is the subject of the Examiner's Official Notice for at least the additional reason explained above in connection with claim 2.

3. Claims 17-19

Independent claim 17 recites features that essentially track the pertinent features discussed above in connection with independent claim 1 and, therefore, claim 17 is patentable over Kinra in view of the unsubstantiated knowledge that is the subject of the Examiner's Official Notice for at least the same reasons.



Each of claims 18 and 19 incorporates the features of independent claim 17 and therefore is patentable over Kinra in view of the unsubstantiated knowledge that is the subject of the Examiner's Official Notice for at least the same reasons.

**B. Rejection of claim 5 under 35 U.S.C. § 103(a) over Kinra in view of Schoneker**

The Examiner has rejected claim 5 under 35 U.S.C. § 103(a) over Kinra in view of Schoneker.

Claim 5 incorporates the features of independent claim 1. Schoneker does not make-up for the failure of Kinra to teach or suggest the features of independent claim 1 discussed above. Therefore, claim 5 is patentable over Kinra and Shoneker for at least the same reasons explained above in connection with claim 1.

Claim 5 also is patentable over Kinra and Schoneker for the following additional reasons.

Claim 5 recites that "the testing comprises the purchasing entity maintaining custody of the product samples during the testing at the test facilities of each of the suppliers." The Examiner has acknowledged that Kinra does not teach or suggest the features recited in claim 5 (see page 20, lines 12-15, of the final Office action). In an effort to make-up for the failure of Kinra to teach or suggest the features of claim 5, the Examiner has stated that:

Schoneker teaches:

wherein the purchasing entity maintains custody of the product samples during testing.

Page 4 paragraph 1 line 1-4, the user of material from a supplier (i.e. the purchasing entity) conducts their own tests on material provided by the supplier to establish the reliability of the supplier's COA's. This would require the purchasing entity maintaining custody of the product samples during testing (rather than the supplier, since it is the supplier's own COA results that are being verified).

The testing described on lines 1-4 of paragraph 1 of page 4, however, is performed at the facilities of the purchasing entity. This teaching has nothing whatsoever to do with the purchasing entity maintaining custody of the product samples during the testing of each of the product samples at the test facilities of each of the suppliers.

In the Response to Arguments section of the final Office action, the Examiner inexplicably elected not to address the point raised in the preceding paragraph. Instead, the Examiner responded with the following statements (§ 8 on pages 8-9 of the final Office action):

As noted above, Kinra and Official Notice established the supply chain benefit of performing testing at suppliers, from a material qualification standpoint, to ensure a quality raw material or input product is sent to the customer. One of ordinary skill in the art at the time of the invention would be motivated to locate the testing, controlling of testing and maintaining custody of product samples at the supplier to realize the benefits as noted in the Official Notice above of locating the testing at the supplier. Schoneker also teaches that product quality is crucial when sourcing a product. On page 2, Schoneker notes that the lack of control for a sourced raw material resulting in substandard material being used in a product. Schoneker teaches that control of product quality is important in ensuring that products perform as they are designed to do. Schoneker also teaches that supplier tests should be evaluated and checked since the supplier's COA should be the same as the customer's COA for a given sample. Schoneker notes that the supplier "must use equivalent methodology and equipment for the analytical evaluation" (page 5 para 3). Schoneker teaches that sometimes suppliers are not under original manufacturer control, or that the control from the OEM is inadequate. This suggests that adequate standards are not in place to ensure that product is not contaminated or misplaced during testing, and that repeatable, standard tests are applied. In light of Schoneker's and Kinra's teachings, one of ordinary skill in the art would be motivated to maintain custody over product samples so that adequate controls were in place to ensure a repeatable, accurate test result, to ultimately ensure that a quality product is shipped from the supplier.

The sum total of these various statements, however, would not have led one skilled in the art to modify Kinra's teaching such that the purchasing entity maintains custody of the product samples during the testing at the test facilities of each of the suppliers. As explained above, Schoneker addresses the problems the Examiner has identified in the statements quoted above by performing the testing at the facilities of the purchasing entity (lines 1-4 of paragraph 1 of page 4), not by "the purchasing entity maintaining custody of the product samples during the testing at the test facilities of each of the suppliers," as recited in claim 5.

For this additional reason, the Examiner's rejection of claim 5 under 35 U.S.C. § 103(a) over Kinra in view of Schoneker should be withdrawn.

**C. Rejection of claims 6 and 7 under 35 U.S.C. § 103(a) over Kinra in view of Stewart**

The Examiner has rejected claims 6 and 7 under 35 U.S.C. § 103(a) over Kinra in view of Stewart.

Each of claims 6 and 7 incorporates the features of independent claim 1. Stewart does not make-up for the failure of Kinra to teach or suggest the features of independent claim 1 discussed above. Therefore, claims 6 and 7 are patentable over Kinra and Stewart for at least the same reasons explained above in connection with claim 1.

Claims 6 and 7 also are patentable over Kinra and Stewart for the following additional reasons.

Claim 6 recites "removing identification information from the product samples before the testing at the test facilities of each of the suppliers." The Examiner has acknowledged that Kinra does not teach or suggest the features of claim 6 (see page 22, lines 5-7, of the final Office action). In an effort to make-up for the failure of Kinra to teach or suggest the features of claim 6, the Examiner has stated that:

Stewart teaches:

further comprising removing identification information from the product samples before the testing.

Page 2 paragraph 6 line 1-4, a blind test is conducted with expensive perfume (Eau de Gucci). A blind test comprises removing identification information from the product samples before testing. This prevents the tester from being biased either for or against the particular sample. In this case removing the identification information from expensive perfume prevents a rating from being assigned that is biased higher than it would be under a blind test, since the tester is unaware the product is expensive. This ensures a product is objectively rated.

Page 3 paragraph 9 line 1-3, chocolate chip cookies are tested with only numbers assigned to them, in this example, a number "28" is assigned to a cookie being tested.

Both Kinra and Stewart address product evaluation, thus both Kinra and Stewart are analogous art.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Kinra, regarding providing product testing, to include the step of removing product identification from the product samples, as taught by Stewart, because it would ensure that the product testing was performed objectively.

The contention that Kinra's software product evaluation system and the blind testing of the soap and cookies described in Stewart "address product evaluation" is insufficient to establish a proper *prima facie* case of obviousness under 35 U.S.C. § 103(a). In this regard, the Examiner is obligated to explain why one skilled in the art at the time the invention was made would have been motivated to modify Kinra's software product evaluation system by removing identification information from the product samples before the testing. The rationale given by the Examiner (i.e., "because it would ensure that the product testing was performed objectively") is not persuasive because it would not have been reasonable for one skilled in the art at the time the invention was made to assume that the user entering product data into Kinra's software product evaluation system would remove identification information from the product samples before the testing. In particular, one skilled in the art at the time the invention was made would not have believed that such a user would have removed identification information from the product samples before the testing because such a user reasonably would have been expected to objectively test the product samples since it would have been in the user's interest to do so.

In the Response to Arguments section of the final Office action, the Examiner inexplicably elected not to address the point raised in the preceding paragraph. Instead, the Examiner responded with the following statements (§ 8 on pages 8-9 of the final Office action; emphasis added):

Stewart teaches removing product identification to eliminate any personal bias a user may have associated with a brand name. (The examiner notes that the Stewart article discusses the Consumer Reports testing methodology where a very wide variety of products are tested, besides cookies and perfume, including software and other sophisticated consumer products.)

One of ordinary skill in the art at the time of the invention would be motivated to modify Kinra's performance parameter testing methodology to include removing identification information from the product, to remove bias and achieve a more objective result.

In the context of Kinra's software product evaluation scheme, however, there is no bias to remove. As explained above, a user of Kinra's software product evaluation system reasonably would have been expected to objectively test the product samples since it would have been in the user's interest to do so. Indeed, the purpose of Kinra's invention is to provide a software product purchaser with a systematic and standardized scheme for evaluating software product alternatives based upon a plurality of predefined criteria (see, e.g., col. 1, lines 10-53). Clearly, such a software product purchaser reasonably could be expected to be objective with himself or herself.

For at least this additional reason, the Examiner's rejection of claim 6 under 35 U.S.C. § 103(a) over Kinra in view of Stewart should be withdrawn.

Claim 7 incorporates the features of claim 6 and therefore is patentable over Kinra and Stewart for at least the same reasons explained above in connection with claim 6.

**D. Rejection of claims 11-14 and 20 under 35 U.S.C. § 103(a) over Kinra in view of Performance Measurement Group (PMG)**

The Examiner has rejected claims 11-14 and 20 under 35 U.S.C. § 103(a) over Kinra in view of Performance Measurement Group (PMG).

Each of claims 11-14 incorporates the features of independent claim 1 and claim 20 incorporates the features of independent claim 17. PMG does not make-up for the failure of Kinra to teach or suggest the features of independent claims 1 and 17 discussed above. Therefore, claims 11-14 and 20 are patentable over Kinra and PMG for at least the same reasons explained above in connection with claims 1 and 17.

Claims 11-14 and 20 also are patentable over Kinra and PMG for the following additional reasons.

Claim 11 recites "transmitting the evaluation report to one or more of the suppliers." The Examiner has acknowledged that Kinra does not teach or suggest the features of claim 11 (see the last two lines on page 24 of the final Office action). In an effort to make-up for the failure of Kinra to teach or suggest this feature of claim 11, the Examiner has stated that (page 25, lines 1-15, of the final Office action):

PMG teaches:

transmitting the evaluation report to one or more of the suppliers. Page 2 paragraph 7 line 1-5, subscribers can access the benchmarking system to access the system.

Page 2 paragraph 5 line, mini-presentations summarize the benchmarking results and comprise a report that is downloaded (i.e. transmitting).

Both Kinra and PMG deal with comparative assessment related to products, thus both Kinra and PMG are analogous art.

PMG teaches that suppliers receiving a copy of an evaluation report allows them to compare their performance to that of other suppliers (page 2 paragraph 5 line 3-7).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of transmitting this report to one or more of the suppliers, as taught by PMG, because it would allow suppliers to benchmark their performance against that of other suppliers.

The benchmarking reports described in PMG only relate to aspects of new product development performance. These aspects range “from developing technologies and selling product strategy, to bringing new products to market, to managing the return on your entire portfolio of R&D investment” (see last ¶ of page 1 through first ¶ of page 2). The benchmarking reports described in PMG have nothing whatsoever to do with an evaluation report that is generated based upon multiple sets of performance parameter values corresponding to results of testing each of the product samples at test facilities of each of multiple suppliers that provided the product samples to a purchasing entity. Instead, these benchmarking reports evaluate the performance of a supplier's new product development processes.

In addition, the contention that Kinra's software product evaluation system and the new product development performance described in PMG “deal with comparative assessment related to products” is insufficient to establish a proper *prima facie* case of obviousness under 35 U.S.C. § 103(a). In this regard, the Examiner is obligated to explain why one skilled in the art at the time the invention was made would have been motivated to modify Kinra's software product evaluation system to transmit the evaluation report to one or more of the suppliers of the software products being evaluated. The Examiner should address the fact that Kinra's software product evaluation system 10 is designed to generate an evaluation of a software product for end-users of the product, whereas PMG generates benchmarking reports

that enable manufacturers to evaluate the performance of their own new product development processes.

The Examiner's rationale for combining Kinra and PMG (i.e., "because it would allow suppliers to benchmark their performance against that of other suppliers") is not persuasive because the benchmarking described in PMG has nothing whatsoever to do with performance parameter values corresponding to the results of testing sample products supplied to a purchasing entity by multiple independent suppliers. Therefore, the Examiner has not met his obligation to point to specific locations in the cited references that provide the requisite motivation to combine the references in a way that would have led one skilled in the art at the time the invention was made to the invention recited in claim 11. The Examiner is reminded that he is not permitted to engage in hindsight reconstruction of the claimed invention, using applicants' disclosure as a blueprint for piecing together prior art to defeat patentability. Without a proper explanation for combining the cited prior art, the Examiner cannot establish a *prima facie* case of obviousness and the rejection of claim 11 should be withdrawn.

In the Response to Arguments section of the final Office action, the Examiner inexplicably elected not to address the points raised in the preceding paragraphs (see § 10 on pages 10-12 of the final Office action). Instead, the Examiner responded with the following statements (pages 11-12 of the final Office action):

PMG discloses a benchmarking service, that is, a service that is provided so that companies can submit data and receiving comparative reports to gauge their company's performance with other companies in their industry group. The data is provided to companies in such a way that each individual company can compare themselves against the group, without seeing detailed data from the other companies. PMG teaches that confidentiality of data is provided, because the data being submitted relates to internal company performance data, and is thus sensitive. This provides a way to obtain a benchmarking comparison using otherwise confidential data from companies because the actual data for any given company is not revealed to another; and yet; this also provides a way for PMG to provide a valuable service in that while confidentiality is maintained, an individual company can obtain a meaningful comparison, or benchmark, of its own performance. PMG and Kinra are analogous art since they both address how to obtain, process, and analyze data that relates to benchmarking, or comparing performance.

These statements, however, do not change the fact that neither Kinra nor PMG teach or suggest anything that would have led one skilled in the art at the time the invention was made to generate an evaluation report based upon multiple sets of performance parameter values corresponding to results of testing each of the product samples at test facilities of each of multiple suppliers that provided the product samples to a purchasing entity. In addition, this statement does not provide any explanation of how the combination of Kinra and PMG would have led one skilled in the art at the time the invention was made to transmit the evaluation report generated by Kinra's software product evaluation system to one or more of the suppliers of the software products being evaluated. Indeed, in accordance with Kinra's teachings, such evaluation reports reflect the particular idiosyncrasies of the software product purchaser (see, e.g., col. 1, lines 63-65, of Kinra). Therefore, it is unclear what value such evaluation reports would provide to the suppliers of the software products.

For at least these additional reasons, the Examiner's rejection of claim 11 under 35 U.S.C. § 103(a) over Kinra in view of PMG should be withdrawn.

Each of claims 12-14 incorporates the features of claim 11 and therefore is patentable over Kinra and PMG for at least the same reasons explained above in connection with claim 11.

Claim 20 recites that the computer program further comprises "computer-readable instructions for customizing the evaluation report so that a supplier receiving the evaluation report is able to benchmark performance of its product sample against other product samples without identifying other suppliers." Claim 20 is patentable over Kinra and PMG for at least the second reason explained above in connection with claim 11.

**E. Rejection of claims 15 and 16 under 35 U.S.C. § 103(a) over Kinra in view of General Motors Supplier Development General Procedure (GP10)**

The Examiner has rejected claims 15 and 16 under 35 U.S.C. § 103(a) over Kinra in view of General Motors Supplier Development General Procedure (GP10).

Each of claims 15 and 16 incorporates the features of independent claim 1. GP10 does not make-up for the failure of Kinra to teach or suggest the features of independent claim 1 discussed above. Therefore, claims 15 and 16 are patentable over Kinra and GP10 for at least the same reasons explained above in connection with claim 1.



Claims 15 and 16 also are patentable over Kinra and GP10 for the following additional reasons.

Claim 15 recites that “the generating comprises compiling a data structure relating corresponding ones of the performance parameter values and respective ones of the supplier test facilities for each of the product samples.”

In his rejection of claim 15, the Examiner has stated that (page 30, line 4 - page 31, line 10, of the final Office action):

Regarding Claim 15, Kinra teaches compiling a data structure relating parameter values for each product sample and providing an evaluation report that provides a comparison of product samples (Column 6 line 7-15 and Figure 2) but does not teach:

wherein generating the evaluation report comprises compiling a data structure relating parameter values and supplier test facilities for each product sample.

GP10 teaches:

compiling a data structure relating parameter values and supplier test facilities for each product sample.

Page 17 Item B No. 5, product samples are identified and reports identifying the product samples are traced (i.e. tracked and recorded).

Page 5, GP10 teaches that each facility is recorded and qualified as a supplier test facility. Standards are applied to these test facilities to ensure that different test facilities provide as repeatable measurements across these different test facilities as possible (see also page 6 Item 6a where qualification of test equipment is discussed).

Both GP10 and Kinra address product sample evaluation, thus both GP10 and Kinra are analogous art.

GP10 teaches maintaining records and ensuring qualification for supplier test facilities is necessary to ensure traceability for supplier test results (page 17 Item B No. 5).

It would have been obvious to one of ordinary skill in the art to modify the teachings of Kinra, regarding providing comparative evaluation reports, to include the step of including supplier test facility data for individual test samples, as taught by GP10, because it would provide traceability for the test results provided for product samples.

This reasoning, however, does not establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a). In particular, modifying Kinra's software product evaluation system “to

include the step of including supplier test facility data for individual test samples” would not have resulted in the invention recited in claim 15. That is, such a modification would not have resulted in compiling a data structure relating performance parameter values, which correspond to the results of testing each of the product samples at test facilities of each of multiple independent suppliers of the product samples, and respective ones of the supplier test facilities for each of the product samples. Therefore, on its face, the Examiner's rejection of claim 15 does not establish a proper *prima facie* case of obviousness under 35 U.S.C. § 103(a) because it does not include a showing that all the claim limitations are taught or suggested by Kinra, GP10, or the knowledge generally available to one of ordinary skill in the art (see MPEP § 706.02(j)).

In addition, none of the sections of GP10 that are cited by the Examiner in support of the rejection of claim 15 would have led one skilled in the art to modify Kinra's disclosure to arrive at the invention recited in claim 15. Indeed, section B.5 on page 17 of GP10 merely asks the material test facility to “Describe how samples are identified and reports traced, and the questionnaire on pages 5 and 6 of GP10 merely asks a supplier to describe aspects of its test facility and testing policies.

For at least these reasons, the Examiner's rejection of claim 15 under 35 U.S.C. § 103(a) over Kinra in view of GP10 should be withdrawn.

Claim 16 incorporates the features of claim 15 and therefore is patentable over Kinra and GP10 for at least the same reasons explained above.

#### VIII. Conclusion

For the reasons explained above, all of the pending claims are now in condition for allowance and should be allowed.

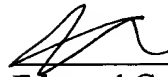
Charge any excess fees or apply any credits to Deposit Account No. 08-2025.

Applicant : Noel K. Hancock et al.  
Serial No. : 09/973,430  
Filed : Oct. 9, 2001  
Page : 26 of 31

Attorney's Docket No.: 10017267-1  
Appeal Brief dated Oct. 30, 2006  
Reply to final action dated May 30, 2006

Respectfully submitted,

Date: October 30, 2006



Edouard Garcia  
Reg. No. 38,461  
Telephone No.: (650) 289-0904

Please direct all correspondence to:

Hewlett-Packard Company  
Intellectual Property Administration  
Legal Department, M/S 35  
P.O. Box 272400  
Fort Collins, CO 80528-9599

### CLAIMS APPENDIX

The claims that are the subject of Appeal are presented below.

Claim 1 (original): A method of benchmarking product samples provided to a purchasing entity by multiple independent suppliers, comprising:  
collecting multiple sets of performance parameter values corresponding to results of testing each of the product samples at test facilities of each of the suppliers; and  
generating an evaluation report based upon the multiple sets of performance parameter values.

Claim 2 (previously presented): The method of claim 1, wherein the collecting comprises testing each of the product samples at the test facilities of each of the suppliers.

Claim 3 (previously presented): The method of claim 2, wherein the testing comprises the purchasing entity controlling the product samples during the testing at the test facilities of each of the suppliers.

Claim 4 (previously presented): The method of claim 3, wherein the testing comprises the purchasing entity preventing unauthorized access to the product samples during the testing at the test facilities of each of the suppliers.

Claim 5 (previously presented): The method of claim 3, wherein the testing comprises the purchasing entity maintaining custody of the product samples during the testing at the test facilities of each of the suppliers.

Claim 6 (previously presented): The method of claim 2, further comprising removing identification information from the product samples before the testing at the test facilities of each of the suppliers.

Claim 7 (previously presented): The method of claim 6, wherein the removing comprises removing from each of the products any information from which the corresponding supplier of the product is identifiable.

Claim 8 (previously presented): The method of claim 2, wherein the testing comprises testing each of the product samples at the test facilities of each of the suppliers under substantially similar test conditions.

Claim 9 (original): The method of claim 1, further comprising analyzing the multiple sets of performance parameters.

Claim 10 (previously presented): The method of claim 1, further comprising compiling a single consistent set of performance parameter values from the multiple sets of performance parameter values.

Claim 11 (original): The method of claim 1, further comprising transmitting the evaluation report to one or more of the suppliers.

Claim 12 (previously presented): The method of claim 11, further comprising collecting a fee from a given one of the suppliers before transmitting the evaluation report to the given supplier.

Claim 13 (previously presented): The method of claim 11, further comprising customizing the evaluation report so that a respective one of the suppliers receiving the evaluation report is able to benchmark performance of one or more of the product samples it supplied to the purchasing entity against other ones of the product samples supplied by other ones of the suppliers without identifying the other ones of the suppliers.

Claim 14 (previously presented): The method of claim 13, wherein the customizing comprises encoding identification information of all the suppliers other than the respective supplier receiving the customized evaluation report.

Claim 15 (previously presented): The method of claim 1, wherein the generating comprises compiling a data structure relating corresponding ones of the performance

parameter values and respective ones of the supplier test facilities for each of the product samples.

Claim 16 (previously presented): The method of claim 15, wherein the generating comprises producing a graph displaying one or more performance parameter values for each of the product samples.

Claim 17 (previously presented): A computer program for benchmarking product samples provided to a purchasing entity by multiple independent suppliers, the computer program residing on a computer-readable medium and comprising computer-readable instructions for causing a computer to:

collect multiple sets of performance parameter values corresponding to results of testing each of the product samples at test facilities of each of the suppliers; and

generate based upon the multiple sets of performance parameter values an evaluation report comprising a data structure relating corresponding ones of the performance parameter values and respective ones of the test facilities for each of the product samples.

Claim 18 (original): The computer program of claim 17, further comprising computer-readable instructions for analyzing the multiple sets of performance parameters.

Claim 19 (original): The computer program of claim 18, further comprising computer-readable instructions for compiling a single consistent set of performance parameter values from the multiple sets of performance parameter values.

Claim 20 (previously presented): The computer program of claim 17, further comprising computer-readable instructions for customizing the evaluation report so that a respective one of the suppliers receiving the evaluation report is able to benchmark performance of one or more of the product samples it supplied to the purchasing entity against other ones of the product samples supplied by other ones of the suppliers without identifying the other ones of the suppliers.

Applicant : Noel K. Hancock et al.  
Serial No. : 09/973,430  
Filed : Oct. 9, 2001  
Page : 30 of 31

Attorney's Docket No.: 10017267-1  
Appeal Brief dated Oct. 30, 2006  
Reply to final action dated May 30, 2006

### EVIDENCE APPENDIX

There is no evidence submitted pursuant to 37 CFR §§ 1.130, 1.131, or 1.132 or any other evidence entered by the Examiner and relied upon by Appellant in the pending appeal. Therefore, no copies are required under 37 CFR § 41.37(c)(1)(ix) in the pending appeal.

Applicant : Noel K. Hancock et al.  
Serial No. : 09/973,430  
Filed : Oct. 9, 2001  
Page : 31 of 31

Attorney's Docket No.: 10017267-1  
Appeal Brief dated Oct. 30, 2006  
Reply to final action dated May 30, 2006

### RELATED PROCEEDINGS APPENDIX

Appellant is not aware of any decisions rendered by a court or the Board that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Therefore, no copies are required under 37 CFR § 41.37(c)(1)(x) in the pending appeal.